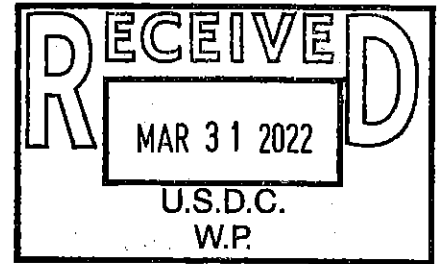


UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DENROY VIGO,

Petitioner



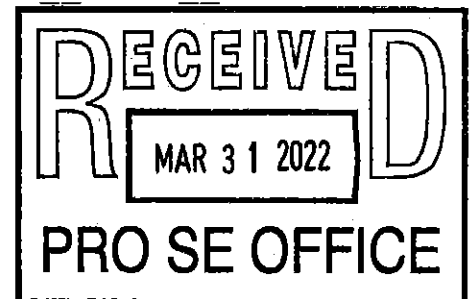
PETITION

-against-

ALEJANDRO MAYORKAS, Secretary
of Department of Homeland Security,

Respondent.
-----X

Civ. _____



PETITIONER UNDER 28 U.S.C. 2241 FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

To Honorable judge of the united states District Court of the Southern District of
New York?

Preliminary explanation: The allegation in the petition are in the form
dictated by the Model use in application for habeas corpus relief encoded by 28
U.S.C. 2241 Cases in the United States District Court.

Paragraph 3 through 9 states the history on the state courts proceeding.
paragraph 10 through 18 states federal constitutional claims and Paragraph 20
through 21 contains required technical information.

Accordingly, for the stated reasons in the attached petition the requested
relief should be granted in its entirety.

PETITION CANCELLATION OF REMOVAL

1. Petitioner will demonstrate in the accompany memorandum of law assuring that the final removal proceeding of meritable constitution claims are fully exhausted and fully protected tendered by United States Supreme Court reasoning in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

2. For the sake of simplicity, this brief uses the term "Respondent" to refer to, as the context requires. The distinction is not relevant to the issues in this proceeding.

STATE COURT PROCEDURAL HISTORY

3. The judgment and conviction under attack was entered December 21, 1988, by the Supreme Court, County of Bronx after a jury trial and sentence.

4. Petitioner was found guilty by a jury after a jury trial, of second degree murder and second degree assault.

5. Petitioner was sentenced to twenty-five years to life and three to seven years imprisonment, respectfully.

6. Petitioner did not testify.

7. On Appeal, Petitioner raised that the evidence did not support the conviction, inconsistencies in eyewitness testimony, evidence of confession by someone other than the defendant rendered the conviction invalid. By decision and order, dated February 5, 1991, the Appellate Division, First Department unanimously affirmed the conviction.

8. (People v. Vigo, 170 AD2d 192 (1st Dep't 1991); lv. denied, People v. Vigo, 77 NY2d 968 [1991]).

9. On February 11, 2004, Petitioner was ordered removed by the administrative Judge on September 28, 1994, to his native country Antigua. (see Attached as Exhibit A). By papers dated July 20, 2021, New York State Department of Correction and Community Supervision **GRANTED conditional parole for deportation only on or after April 20, 2021, but no later than April 20, 2023.** For the reason discussed below the *six months* period for removal has expired and cancellation of removal should be granted in its entirety.¹

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

10. The Due Process Clause of the Fifth Amendment of the Constitution of the United States provides, in relevant part, "No person shall be ... deprived of ... liberty ... without due process of law."

Section 241(a)(6) of the Immigration and Naturalization Act, 8 U.S.C. 1231(a)(6)(2001), provides:

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

¹ This Court can take judicial notice the President of the United States, Joe Biden, initiated a pilot program which authorized alternative to detention programs so-called "home curfew" as respondent is aware and Petitioner should be enrolled in this new pilot program at the discretion of DHS. (See attached Exhibit B)

A. Authority Stay for Removal Order

11. Section 1231 governs the detention, release, and removal of aliens who, like Petitioner, have been ordered removed from the country. 8 U.S.C. §1231. Normally, the Attorney General is required to remove such an alien within ninety days. §1231(a)(1)(A). In the case of an alien who is incarcerated when the removal order is entered, this ninety-day period begins to run on the date the alien is released. §1231(a)(1)(B)(iii). Where, as here, the removal order is based on criminal convictions, the Attorney General must detain the alien during this removal period. §1231(a)(2). Thus, Petitioner's detention was mandated for ninety days following his release from state custody.

12. In *Rivas v. Searls*, 2022WL117950, the Court of Appeals emphasize in *Zadvydas* that aliens which have been lawfully admitted for entry into the United States, left open a question of whether §1231(a)(C) authorizes indefinite detention of inadmissible aliens. The Second Circuit contends that when the government is unable to remove the alien because no country would accept him, the Respondent do not have the authority under 8 U.S.C. §1231(a)(6) to put that alien in prison for the rest of his life. Quoting *Zadvydas v. Davis*, 533 U.S. 687 (2001). However, rejected the notion and held that §1231(a)(6) does not authorize indefinite detention.

13. Specifically, it held that the statutes provision that certain aliens may be detained beyond the removal period authorize detention only as long as necessary to determine whether the aliens removal is reasonable foreseeable. The Second Circuit reached this interpretation to avoid the serious constitutional questions of

whether indefinitely detention would violate the due process rights of an alien unlawfully in this country. The Second Circuit resolved the reasonableness to the permissible length of detention that *six months* was a “permissible reasonable” within *six months* of his or her detention².

14. As such while removal proceedings are pending, 8 U.S.C. §1226 “authorizes the Government to detain certain aliens already in the country ...” *Jennings v. Rodriguez*, 138 S.Ct. 830, 838 (2018). In particular, §1226(a) provides that “the Attorney General ... (1) may continue to detain the arrested alien; [or] (2) may release the alien on (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole ...” If, prior to a final order of removal, the government elects to detain the alien under §1226, the alien may request a review of his custody and bond determinations by an Immigration Judge. See, e.g., 8 C.F.R. §1003.19(A)(“Custody and bond determinations made by [ICE] pursuant to 8 C.F.R. part 1236 may be reviewed by an Immigration Judge”).

15. 8 U.S.C. §1231, on the other hand³, governs the detention of aliens during and after the ninety-day “removal period” §1231(a)(1)(B) provides that an alien’s “removal period” begins at the latest of the following events:

² Deference is owed to our sister circuits determination that bond hearing for noncitizen who have been detained for *six months* after a final order of removal. *Garland Gonzalez*, 2021 WL 3711642, 955 F.3d 762 (C.A.9-Cal. 2020), *Tejada v. Godfrey*, 954 F.3d 1245 (C.A.9-Wash.2020); (same) *Johnson v. Arteaga-Martinez*, 2021 WL 3711641 (C.A.3 Aug. 20, 2019) (unpublished).

³ Notably, in *People ex rel. Wells v. DeMarco*, 168 AD.3d 31 (2nd Dep’t 2018), citing the Fourth Department decision therein, NYCDOCCS conceded during the appeal that “it may not detain an individual solely to facilitate a transfer to federal immigration officials seeking to effectuate a final order of removal.”

(i) The date of order of removal becomes administratively final;

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order;

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

B. ADMINISTRATIVE REMOVAL BECOMES FINAL

16. Pursuant to Section (i) administrative removal becomes final creates complexity in the area of immigration law that does not authorize a bond hearing before an immigration judge.

17. A separate provision of the INA, 8 USC §1226(c) governs the mandatory detention of certain non-citizens convicted of offenses enumerated by 8 USC §1226(c)(1). The consolidated cases of *Johnson v. Arteaga-Martinez*, No. 19-896, and *Garland v. Gonzalez*, No. 20-322, present a very similar legal question the underline decision in these cases which was issued by the 3rd and 9th Circuits respectfully, concluded that the post order removal statute of 8 USC§1231(the same as in *Zadvydas*) must be interpreted to require bond hearings at the six month mark. The government appealed both decisions to the Supreme Court which granted certiorari and the decision should issue before the end of the court's term in June 2022.

REQUIRED INFORMATION

18. On appeal, the administrative judge did not have the pilot program discussed in footnote one that maybe reconsidered as an alternative to detention by Respondent prior to authorizing any actions taken in this petition.

19. Petitioner does not have any further sentence to serve at the completion of sentence under attack in paragraph 5.

WHEREFORE, Petitioner prays that this court:

A. ISSUE a writ of habeas corpus to be brought to the end that he may be discharged from his unconstitutional immigration confinement.

B. ISSUE a writ of habeas corpus cancellation of removal and/or de novo review of removal proceedings.

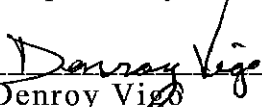
C. REQUIRE Respondent to furnish transcript of the entire immigration proceedings developed in the immigration court pursuant to Rule 5 of the Rules Governing Section 2241 Cases in the United States District Court.

D. GRANT such further relief as may deem just and proper.

I, Denroy Vigo, declare under the penalty of perjury, pursuant to 28 U.S.C. §1746, that following is true and correct and this petition for a writ of habeas corpus was placed in the prison mail system on March 26, 2022 constitute due and sufficient service.

Dated: March 26, 2022
Beacon, New York

Respectfully submitted,



Denroy Vigo
88-T-2587
Fishkill Correctional Facility
271 Matteawan Road, P.O. Box 1245
Beacon, NY 12508-0307

EXHIBIT A

NewsRoom

2/8/22 Reuters News 18:58:59

Reuters News
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February 8, 2022

U.S. to try house arrest for immigrants as alternative to detention

Ted Hesson

WASHINGTON, Feb 8 (Reuters)

By Ted Hesson

WASHINGTON, Feb 8 (Reuters) - The Biden administration will place hundreds of migrants caught at the U.S.-Mexico border on **house arrest** in the coming weeks as it seeks cheaper **alternatives to immigration detention**, according to a notice to lawmakers and a U.S. Department of Homeland Security (DHS) official.

A 120-day pilot program will be launched in Houston and Baltimore, with 100-200 single adults enrolled in each location, according to the notice, which was sent by U.S. **Immigration** and Customs Enforcement (ICE) and reviewed by Reuters.

The so-called "home curfew" pilot will cost \$6-8 per day for each enrollee, far less than the \$142 daily cost of **immigration detention**.

The enrollees will generally be required to remain at home from 8 p.m. until 8 a.m., with exceptions for job schedules for those with work authorization or extraordinary circumstances.

Current **alternatives to detention**, such as ankle bracelets and phone monitoring, require enrollees to notify case managers if they are leaving the state or traveling, but do not mandate home confinement, the DHS official said.

U.S. President Joe Biden, a Democrat, has pledged a more humane approach to **immigration** policy than his predecessor Republican Donald Trump. During Biden's presidential campaign he pledged to end for-profit **immigration detention** but has yet to deliver on that promise.

The home curfew program could face criticism from both **immigration** hardliners for being too lax and pro-**immigrant** advocates for being stricter than existing **alternatives to detention**. One **immigrant** advocate on Twitter called the plan "mass e-carceration" after Axios first reported details of the pilot.

The plan comes as **arrests** at the U.S.-Mexico border are expected to reach record highs again this year <https://www.reuters.com/world/americas/us-preps-another-record-breaking-rise-migrant-arrests-mexico-border-2022-01-27> and **detention** space has been limited by the coronavirus pandemic. Though most migrants caught at the border are being rapidly expelled from the United States under a COVID-related health order, thousands have been allowed into the country to pursue their **immigration** cases.

"We just don't have the capacity," the DHS official said. "We're not going to detain our way out of the border crisis."

The Biden administration plans to ask Congress for funding to place as many as 400,000 migrants this year in **alternatives to detention**, which could include the home curfew initiative as well as existing programs, the DHS official said. The total number of migrants in such programs would be higher since only heads of households are enrolled.

About 164,000 are currently in **alternative-to-detention** programs, according to ICE, roughly double the total on Sept. 30, 2020, before Biden took office.

(Reporting by Ted Hesson in Washington; Additional reporting by Kristina Cooke in San Francisco; Editing by Mica Rosenberg) ((Ted.Hesson@thomsonreuters.com; 202-450-8633;))

---- Index References ----

Company: DHEHAN STAINLESS PIPE Co., Ltd.; axios Pharma GmbH; U.S. Department of Homeland Security; TWITTER, INC.; U.S. Immigration and Customs Enforcement

News Subject: (Crime (1CR87); Emerging Market Countries (1EM65); Immigration & Naturalization (1IM88); Smuggling & Illegal Trade (1SM35); Social Issues (1SO05); Top World News (1WO62); Race Relations (1RA49); Crime (1CR87); Intellectual Freedoms & Civil Liberties (1IN08); Legal (1LE33); Government (1GO80); U.S. President (1US75); HR & Labor Management (1HR87); Immigration & Naturalization (1IM88); World Conflicts (1WO07); Emerging Market Countries (1EM65); U.S. Legislation (1US12))

Industry: (Coronavirus (1CV19); Healthcare (1HE06); Homeland Security (1HO11); Infectious Diseases (1IN99); Security (1SE29); Viral (1VI15); Homeland Security (1HO11))

Region: (Americas (1AM92); Mexico (1ME48); North America (1NO39); Latin America (1LA15); Mexico (1ME48); Americas (1AM92); USA (1US73))

Language: EN

Other Indexing: (Biden administration; Democrat; Republican; Congress; DHS; Axios; U.S. Department of Homeland Security; Twitter; U.S. Immigration and Customs Enforcement; ICE) (Ted Hesson; U.S.; Joe Biden; Donald Trump; Donald John Trump; Kristina Cooke; Mica Rosenberg)

Keywords: USA; **IMMIGRATION**; **DETENTION**; Cultural globalization; **Detention** centers; Government; **Immigration detention**; **Immigration** law; **Immigration** to the United States; International law; Mexico–United States border; Presidency of Joe Biden; **U.S. Immigration** and Customs Enforcement; United States; United States Department of Homeland SecurityKeywords:

Word Count: 468

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U.S. to try house arrest for immigrants as alternative to detention

Ted Hesson; WashingtonTed HessonKristina Cooke; San FranciscoMica RosenbergReuters
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**US-USA-IMMIGRATION-DETENTION:U.S. to try house arrest for immigrants as
alternative to detention**
2022-02-08 19:03:05 GMT+00:00

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0.035473354 The seal of the U.S. Department of Homeland Security is
seen after a news conference near the International Bridge between Mexico
and the U.S., as U.S. authorities accelerate removal of migrants at border
with Mexico, in Del Rio, Texas, U.S., September 19, 2021. REUTERS/Marco
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EXHIBIT B

U.S. Department of Homeland Security

130 Delaware Avenue
Buffalo, New York, 14202



**U.S. Immigration
and Customs
Enforcement**

February 11, 2014

VIGO, DENROY DIN #: 88T2587

Sing Sing Correctional Facility

354 Hunter Street

Ossining, New York 10562-5442

Mr. VIGO,

Immigration and Customs Enforcement (ICE) records indicate that you were ordered removed by the Immigration Judge on **September 28, 1994** to **Antigua**. In order to facilitate your removal from the United States, when you are released from the New York State Department of Corrections and Community Services into the custody of ICE, please send in **your passport, expired passport**, birth certificate, and/ Antiguan identification at your earliest convenience. Please send it to the address below.

DHS/ICE/Enforcement and Removal Operations

Attn: Agent David J. Britton

130 Delaware Avenue

Buffalo, New York 14202

If you are not in possession of your passport, expired passport, and/or other national identity documents, please contact family, friends, consular officers, attorneys and/or representatives, and ask them to send it/them to us. Failure to provide ICE the requested documents will significantly delay your removal from the United States. Be sure to write your correct "A" number **017 728 182** on all correspondence you or your family may send us.

You passport or a copy of your passport is very important pertaining to your removal.

Thank you for your attention to this matter.

Sincerely,

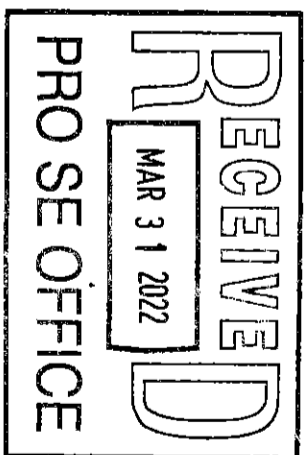
A handwritten signature in black ink, appearing to read "David J. Britton", with a stylized flourish at the end.

David J. Britton

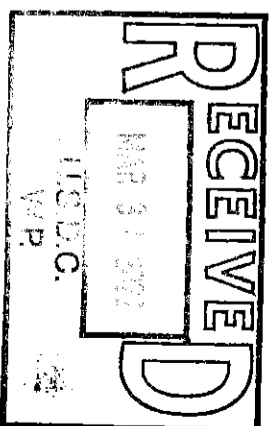
Immigration Enforcement Agent

Enforcement and Removal Operations

Denroy Vigo - 88T2587
Fishkill Correctional Facility
P.O. Box 1245
Beacon, NY 12508



TO: Clerk of the Court
United States District Court
Southern District of New York
300 Duane St. Suite 260
White Plains, NY 10601



Legal Mail

